87-980

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

IN THE MATTER OF B.B. AND G.B., MINORS.
MISSISSIPPI BAND OF CHOCTAW INDIANS,
Appellant,

v.

ORREY CURTISS HOLYFIELD, VIVIAN JOAN HOLYFIELD,
J.B., NATURAL MOTHER AND W.J., NATURAL FATHER,
Appellees.

On Appeal From the
Supreme Court of Mississippi

JURISDICTIONAL STATEMENT

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December, 1987

PRESS OF BYRON S. ADAMS, WASHINGTON, D.C. (202) 347-8203

QUESTIONS PRESENTED

Do Mississippi Courts have Jurisdiction over adoptions of Indian children whose natural parents are residents of and domiciled on an Indian Reservation?

A. Does a state court requirement of physical presence within and parental consent to children's acquisition of their parents' residence and domicile unlawfully infringe upon the special federal/tribal relationship reflected in the ICWA when applied to Indian children of reservation parents?

B. Does the definition of residence or domicile of Indian children for purposes of the Indian Child Welfare Act turn on a state or a federal definition?

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IN THE MATTER OF B.B. AND G.B., MINORS.
MISSISSIPPI BAND OF CHOCTAW INDIANS,
Appellant,

v.

ORREY CURTISS HOLYFIELD, VIVIAN JOAN HOLYFIELD,
J.B., NATURAL MOTHER AND W.J., NATURAL FATHER,
Appellees.

On Appeal From the
Supreme Court of Mississippi

JURISDICTIONAL STATEMENT

Appellant appeals from the judgment of the Supreme Court of Mississippi, entered on August 5, 1987, rehearing denied, September 16, 1987, affirming the lower court's denial of appellant's motion to vacate and set aside a decree of adoption and submit this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

OPINION BELOW

The opinion of the Supreme Court of Mississippi is reported at 511 So.2d 918 (Miss. 1987) and is reproduced as an appendix to this Jurisdictional Statement.

GROUNDS ON WHICH THE COURT'S JURISDICTION IS INVOLVED

(i) The proceeding below was a state court adoption proceeding of twin Mississippi Choctaw Indian infants pursuant to Miss. Code Ann. sec. 93-17-3.

(ii) The decision of the court below was dated and entered on August 5, 1987. Appellant made a timely motion for rehearing, which was denied on September 16, 1987. Appellant's notice of appeal to this Court was filed on December 14, 1987, in the Supreme Court of Mississippi.

(iii) Appellant believes this Court has jurisdiction of this appeal pursuant to 28 U.S.C. § 1257(2). This matter is not free from doubt, and in the alternative, appellant prays that this Court treat this Jurisdiction Statement as a Petition for Writ of Certiorari pursuant to 28 U.S.C. § 1257(3) and 28 U.S.C. § 2103[1]

(iv) The following cases are believed to sustain the jurisdiction:

Warren Trading Post Co. v. Arizona Tax Com'n, 380 U.S. 685 (1965)

[1] Regarding 28 U.S.C. § 1257(2), although the cases cited under (iv) *infra* were accepted by the Court as appeals, other Indian jurisdiction cases have been reviewed on certiorari, e.g., *Williams v. Lee,* 358 U.S. 217 (1959). See also *United States v. John,* 437 U.S. 634 (1978) where both appeal from the Supreme Court of Mississippi and certiorari to the Fifth Circuit Court of Appeals were granted on earlier consolidated Choctaw jurisdiction cases.

McClanahan v. Arizona Tax Com'n, 411 U.S. 164 (1973)

Tonasket v. Washington, 411 U.S. 451 (1973)

Ramah Navajo School Board, Inc., v. Bureau of Revenue of New Mexico, 458 U.S. 832 (1982)

(v) The validity of Miss. Code Ann. Sec. 93-17-3 (Supp. 1987) as applied in Indian adoptions is involved. The statute is set out in the Appendix A to this Jurisdictional Statement.

STATEMENT OF THE CASE

Appellant Mississippi Band of Choctaw Indians is a federally recognized Indian tribe in the State of Mississippi. On March 31, 1986 Appellant filed a Motion to Vacate and Set Aside the Final Decree of Adoption in a state adoption proceeding of twin Mississippi Choctaw infants by a non-Indian couple. Both the natural mother and the putative father are full-blood Mississippi Choctaw Indians enrolled at the federal Indian Agency at Philadelphia, Mississippi, and are residents of and domiciled on the Choctaw Indian Reservation. The adopting non-Indian parents reside in Harrison County, Mississippi about 200 miles south of tribal headquarters. Mississippi is a non-Public Law 280 State and the federal/tribal jurisdiction over the Choctaw Indian Reservation was recognized by this Court in *United States v. John,* 437 U.S. 634 (1978).

B.B. and G.B. are Choctaw Indians of the full blood and eligible for enrollment in the Mississippi Band of Choctaw Indians. They were born unto J.B., their natural mother on December 29, 1985 in Harrison County, Mississippi where the mother had travelled

to give birth.[2] A Consent to Adoption was executed by J.B. on January 10, 1986. The Consent to Adoption by the putative father, W.J., was executed on the 11th day of January, 1986, but was not certified by the Judge until June 3, 1986, long after the May 21st, 1986 hearing date on Appellant's Motion.

The Decree of Adoption was rendered on the 28th day of January, 1986.

Appellant Mississippi Band of Choctaw Indians, which had at no time been notified or served with process, filed its Motion to Vacate and Set Aside the Final Decree of Adoption on March 31, 1986. After the motion was filed and heard on May 21, 1986, another affidavit was given by the natural mother, J.B., and filed June 9, 1986. A Reaffirmation of Consent of Adoption was filed by W.J., putative father, on June 9, 1986. The Harrison County Chancery Court entered its Opinion overruling the motion on July 14, 1986, and a Decree was entered on July 30, 1986.

Appellant opposed the adoption petition filed by non-Indian Petitioners Orrey Curtiss Holyfield and Vivian Joan Holyfield in the Chancery Court of Harrison County, State of Mississippi by filing a Motion to Vacate and Set Aside the Final Decree of Adoption. Appendix B. The Motion asserted that the minor children of the natural mother residing on the Choctaw Indian Reservation were subject to the exclusive jurisdiction of the Mississippi Band of Choctaw Indians Tribal Court under preemptive federal law. Those laws were enacted to protect the tribe and its members

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[2] The Choctaw Health Center closed its obstetric unit in 1981 and since then Choctaw mothers have been routinely transferred off-reservation for childbirth.

from assertions of state jurisdiction concerning matters arising on the Choctaw Reservation. 25 U.S.C. § 1911(a).

After briefing and argument the Chancery Court for the First Judicial District of Harrison County, Mississippi decided it had jurisdiction to decide these adoption proceedings. Its judgment is set forth in Appendix C and its Opinion in Appendix D. The Court found that the Indian Tribe never obtained exclusive jurisdiction over the children because they were born outside the confines of and had never resided on or been physically on the Choctaw Indian Reservation.

Appellant prosecuted an appeal to the Supreme Court of Mississippi, which affirmed the adoptions and issued the Opinion reproduced in the Appendix E to this Jurisdictional Statement. Appellant maintained on appeal that federal statutes, i.e., The Indian Child Welfare Act, 25 U.S.C. § 1901 et seq., the United States Constitution, Art. I, Sec. 8, cl. 3; and the laws of the United States established principles, which were preemptive of state jurisdiction. *United States v. John,* 437 U.S. 634 (1978); *Fisher v. District Court,* 424 U.S. 382 (1976); *Morton v. Mancari,* 417 U.S. 535 (1974). The essential basis of the Mississippi Supreme Court's Opinion was that minors do not acquire the legal residence and domicile of their parent(s) in the absence of the child's actual physical presence in such location and if to do so would be contrary to the parental desires. The ruling, as applied to Indians, constitutes an infringement by the State of Mississippi in the historical and federal statutory exclusive jurisdiction the Appellant tribe possesses in regulating the domestic relations of its members and residents.

THE QUESTIONS ARE SUBSTANTIAL

1. The Mississippi Supreme Court's affirmation of the lower court's denial of Appellant Tribe's Motion to Vacate and Set Aside the Decree of Adoption is repugnant to the Laws and Constitution of the United States, conflicts with prior governing decisions of this Court, and is contrary to the settled legal history and principles of Federal Indian Law. The right of Indian Tribes to regulate exclusively the domestic relations of their members upon tribal lands is established doctrine.

This court has consistently maintained that tribal forums have exclusive jurisdiction over the domestic internal relations of their members living in tribal relationship. See e.g., *Montana v United States,* 450 U.S. 544, 564 (1981); *Santa Clara Pueblo v. Martinez,* 436 U.S. 49, 55-56 (1978); *United States v. Wheeler,* 435 U.S. 313, 322 n. 18 (1978); *Fisher v. District Court,* 424 U.S. 382, 386-389 (1976); *United States v. Quiver,* 241 U.S. 602 (1916).

Congress through the passage of the Indian Child Welfare Act of 1978, 25 U.S.C. §§1901 et seq., statutorily provided that "An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law." 25 U.S.C. §1911(a).

The Executive Branch of the Federal Government has also adhered to the position that tribal governments exercise exclusive jurisdiction over the Indian family when that family is resident or domiciled on

an Indian reservation. Powers of Indian Tribes, 55 I.D. 14, October 25, 1934; Opinions of the Solicitor Department of the Interior 445.

Within this context, the attempted exercise by the State of its jurisdiction over domestic relations matters of reservation resident or domiciled Indians would constitute an unlawful infringement upon the sovereignty of Appellant tribe and its tribal courts and would violate the test for state court jurisdiction over causes of action arising in Indian country with an Indian defendant established by this Court in *Williams v. Lee,* 358 U.S. 217 (1959). That test, set forth within the context of a decision that an Arizona State Court did not have jurisdiction over a suit brought by a non-Indian store owner on the Navajo Reservation against a Navajo Indian on a debt, is:

> Essentially, absent governing Acts of Congress, the question has always been whether the state action infringed on the right of reservation Indians to make their own laws and be ruled by them. 358 U.S. at 220.

Although this court in *Kennerly v. District Court,* 400 U.S. 423 (1971) held that 25 U.S.C. 1321 et seq. was such a governing act of Congress in that it enabled states to assume jurisdiction, since 1968 only with tribal consent, in *Washington v. Yakima Indian Nation,* 439 U.S. 463, reh. den. 440 U.S. 940 (1979) this Court made it clear that these requirements must be "strictly complied with". In any event Mississippi has never complied with this statute to acquire jurisdiction and this Court has recognized its non-P.L. 280 status. *United States v. John,* supra.

The Mississippi Supreme Court decision upholding state court jurisdiction over the adoptions of Choctaw infants of reservation parents ignores the recognized principles of federal Indian Law which serve to protect tribal self-government and established attributes of Indian sovereignty. The Mississippi Supreme Court totally disregarded the clear and emphatic rules of statutory construction for federal laws affecting tribal relations and governmental interests which were enunciated by this Court in *Ramah Navajo School Board v. Bureau of Revenue,* 458 U.S. 832 (1982):

> We have consistently admonished that federal statutes and regulations relating to Tribes and tribal activities must be "construed generously in order to comport with . . . traditional notions of [Indian] sovereignty and with the federal policy of encouraging tribal independence." *White Mountain,* supra, at 144; see also *McClanahan v. Arizona State Tax Com'n,* 411 U.S., 174-175, and n 13, (1973); *Warren Trading Post Co. v Arizona Tax Comm'n,* 380 U.S., at 690-691. This guiding principal helps relieve the tension between emphasizing the pervasiveness of federal regulation and the federal policy of encouraging Indian self-determination. Although we must admit our disappointment that the courts below apparently gave short shrift to this principle and to our precedents in this area, we cannot and do not presume that state courts will not follow both the letter and the spirit of our decisions in the future.

458 U.S., at 846.

Accord, *Merrion v. Jicarilla Apache Tribe,* 455 U.S. 130, 153 (1982); *Santa Clara Pueblo v. Martinez,* 436 U.S. 49, 60 (1978).

2. The decision of the Mississippi Supreme Court misinterprets and violates the Indian jurisdiction test set out in *Williams v. Lee,* supra, because it impermissibly infringes upon the authority and right of Mississippi Choctaw Indians to make their own laws and be governed by them. Despite the rulings of this Court recognizing tribal groups as a "separate people, with the power of regulating their internal and social relations," *United States v. Kagama,* 118 U.S. 375, 381-382 (1886); see also *United States v. Wheeler,* 435 U.S. 313 (1978); and having the power to make their own substantive law in internal matters, see *Roff v Burney,* 168 U.S. 218 (1897); such as membership eligibility, *Santa Clara Pueblo v. Martinez,* 436 U.S. 49 (1978); domestic relations, *United States v. Quiver,* 241 U.S. 602 (1916); and reservation adoptions, *Fisher v. District Court,* 424 U.S. 382 (1976), the decision of the Mississippi Supreme Court contrarily holds that it has jurisdiction over an adoption petition filed by non-Indian petitioners on Indian children of reservation parents in tacit disregard of explicit federal legislation and of its patent infringement upon this recognized area of tribal self-government.

Furthermore, the two-pronged ratio decidendi of the Mississippi Supreme Court ruling is flawed on both points of analysis; initially in its conclusion that the choice of a state forum by the reservation Indian mother would dictate the infant's legal residence and domicile and secondly that court's requirement that the children first be physically present on the reservation in order to qualify for reservation residence

and domicile. This Court previously spoke on the first of the two conclusions when, holding in *Fisher v. District Court,* supra, that tribal jurisdiction is exclusive in an Indian adoption case where all parties are reservation Indians, it said:

> Finally, we reject the argument that denying the Runsaboves access to the Montana courts constitutes impermissible racial discrimination. The exclusive jurisdiction of the Tribal Court does not derive from the race of the plaintiff but rather from the quasi-sovereign status of the Northern Cheyenne Tribe under federal law. Moreover, even if a jurisdictional holding occasionally results in denying an Indian plaintiff a forum to which a non-Indian has access, such disparate treatment of the Indian is justified because it is intended to benefit the class of which he is a member by furthering the congressional policy of Indian self-government. *Morton v. Mancari,* 471 U.S. 535 (1974).

424 U.S. 390-391.

The illogic of the Mississippi Supreme Court decision in adopting a "physical presence" requirement for residence and domicile purposes is evident in that it purports to declare the standard for *state* residency and domicile. However, this Court has repeated ruled that citizenship is not inconsistent with federal guardianship and Indian country jurisdiction. *McClanahan v. Arizona Tax Com'n,* 411 U.S. 164, 172-173 (1973); *Creek County v. Seber,* 318 U.S. 705, 718 (1943); *Tiger v. Western Investment Co.,* 221 U.S. 286, 310-313 (1911); *United States v. Celestine,* 215 U.S. 278 (1909).

To the extent the Mississippi Supreme Court opinion implies a "physical presence" requirement to these Indian infants' establishment of reservation residence and domicile, such action, again, impinges upon Appellant's tribal sovereignty in direct contravention of the Indian jurisdiction test set out in *Williams v. Lee,* supra. This Court in *American Railway Express Co. v. Levee,* 263 U.S. 19 (1923), wrote that:

> The law of the United States cannot be evaded by the forms of local practice***. The local rule applied as to the burden of proof narrowed the protection that the defendant had secured (under Federal law), and therefore contravened the law.

263 U.S. at 21.

In *Dice v. Akron, Canton & Youngstown R.R. Co.,* 342 U.S. 359 (1952), this Court also held:

> Congress * * * granted petitioner a right * * * State laws are not controlling in determining what the incidents of this Federal right should be.

342 U.S. at 361.

THE ISSUES ARE IMPORTANT

The decision of the court below in this case undermines one fundamental purpose of the Indian Child Welfare Act; protection of the reservation family unit decisional process from non-Indian interference. Grave uncertainty, too, is cast over the wisdom of continuing the Indian Health Service practice of transporting expectant mothers off-reservation to give birth. The decision portends a "jurisdictional black hole" in the

otherwise comprehensive national protection of the Indian Child Welfare Act and positions Mississippi as a potential adoption Mecca for, among others, black marketeers trading in Indian children.

Furthermore this decision involves legal principles that frequently arise in the administration of Indian Affairs nationally, such as alleged limitations on federal authority.

CONCLUSION

For these reasons the questions presented are so substantial and the decision of the court below is plainly in conflict with numerous decisions of this Court such as to require plenary consideration, with brief on the merits and oral arguments, for their resolution, or summary reversal.

Respectfully submitted:

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December, 1987

APPENDIX

APPENDIX

A. Statutes Involved

§ 93-17-3. Who may be adopted—who may adopt—venue of adoption proceedings—change of name.

Any person may be adopted in accordance with the provisions of this chapter in term time or in vacation, by an unmarried adult or by a married person whose spouse joins in the petition, provided that the petitioner or petitioners shall have resided in this state for ninety (90) days preceding the filing of the petition, unless the petitioner or petitioners, or one of them, be related to the child within the third degree according to the civil law, in which case such restriction shall not apply. Such adoption shall be by sworn petition filed in the chancery court of the county in which the adopting petitioner or petitioners reside or in which the child to be adopted resides or was born, or was found when it was abandoned or deserted, or in which the home is located to which the child shall have been surrendered by a person authorized to so do. The petition shall be accompanied by a doctor's certificate showing the physical and mental condition of the child to be adopted, and a sworn statement of all property, if any, owned by the child. The court shall have the power to change the name of the child as part of the adoption proceedings.

The word "child" herein shall be construed to refer to the person to be adopted, though an adult.

INDIAN CHILD WELFARE ACT, 25 U.S.C. 1901 et seq., Public Law 95-608, Nov. 8, 1978 92 Stat, 3069

§ 1901 Congressional Findings

Recognizing the special relationship between the United States and the Indian tribes and their members and the Federal responsibility to Indian people, the Congress finds—

(1) that clause 3, section 8, article I of the United States Constitution provides that "The Congress shall have power * * * To regulate Commerce * * * with Indian tribes" and, through this and other constitutional authority, Congress has plenary power over Indian affairs;

(2) that Congress, through statutes, treaties, and the general course of dealing with Indian tribes, has assumed the responsibility for the protection and preservation of Indian tribes and their resources;

(3) that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct interest, as a trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe;

(4) that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions; and

(5) that the States, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.

§ 1903. Definitions

For the purposes of this chapter, except as may be specifically provided otherwise, the term—

(1) "child custody proceeding" shall mean and include—

(i) "foster care placement" which shall mean any action removing an Indian child from its parent or Indian custodians for temporary placement in a foster home or

institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;

(ii) "termination of parental rights" which shall mean any action resulting in the termination of the parent-child relationship;

(iii) "preadoptive placement" which shall mean the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and

(iv) "adoptive placement" which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption. Such term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to one of the parents.

(2) "Indian child" means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe;

(3) "Indian child's tribe" means (a) the Indian tribe in which an Indian child is a member or eligible for membership or (b), in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts;

(4) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native Village as defined in section 1602 (c) of Title 43;

(5) "parent" means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child including adoptions under tribal law or custom. It does not include the unwed father where paternity has not been acknowledged or established;

(6) "reservation" means Indian country as defined in section 1151 of Title 18 and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit for any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation;

(7) "Secretary" means the Secretary of the Interior; and

(8) "tribal court" means a court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings.

§ 1911. Indian tribe jurisdiction over Indian child custody proceedings

(a) Exclusive jurisdiction

An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.

(b) State court proceedings; intervention

In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child and the Indian

child's tribe shall have a right to intervene at any point in the proceeding.

(c) Full faith and credit to public acts, records, and judicial proceedings of Indian tribes

The United States, every State, every territory or possession of the United States, and every Indian tribe shall give full faith and credit to the public acts, records, and judicial proceedings of an Indian tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to the public acts, records, and judicial proceedings of any other entity.

B. Lower Court Motion

IN THE CHANCERY COURT OF
HARRISON COUNTY, MISSISSIPPI

FIRST JUDICIAL DISTRICT

IN THE MATTER OF THE ADOPTION OF
SAMUEL SETH HOLYFIELD and MEGAN
BETH HOLYFIELD

NO. A-3574

ORREY CURTISS HOLYFIELD and
VIVIAN JOAN HOLYFIELD, PETITIONERS

MOTION TO VACATE AND SET ASIDE FINAL DECREE OF ADOPTION

NOW COMES the Mississippi Band of Choctaw Indians of the State of Mississippi, by and through Phillip Martin, Chief of the Mississippi Band of Choctaw Indians, a duly recognized Indian Tribe organized and existing by virtue of the Laws of the United States of America, Department of the Interior, Bureau of Indian Affairs, and files this their Motion to vacate, set aside and hold for naught the Final Decree of Adoption of Samuel Seth Holyfield and Megan Beth Holyfield, the minor children of Jennie Bell,

a member of the Mississippi Band of Choctaw Indians, duly enrolled on said Tribal Rolls, and residing on the Choctaw Indian Reservation in Neshoba County, Mississippi, and as grounds for said Motion would most respectfully show unto the Court the following facts, to-wit:

I.

Samuel Seth Holyfield and Megan Beth Holyfield, formerly referred to as "Little Boy Bell" and "Little Girl Bell", minors, were born unto Jennie Bell, the natural mother of said minors, a full-blooded Choctaw Indian, on the 29th day of December 1985. That the putated father of said minor Choctaw Indians is Windell Jefferson, a full-blooded, enrolled member of the Mississippi Band of Choctaw Indians.

II.

The Movant further alleges and charges that by virtue of the natural mother, Jennie Bell, and the putated father, Windell Jefferson, being members of the Mississippi Band of Choctaw Indians, the minor children, Little Boy Bell and Little Girl Bell, who are named in the Final Decree of Adoption as Samuel Seth Holyfield and Megan Holyfield, come within the provisions of *United States Code Annotated*, §§ 1902, 1903, 1911, 1912, 1913, 1914, 1915, 1916, 1917, 1918, 1919, 1920 and 1921, and it is further alleged and charged that the provisions of said statutes were not complied with in the adoption proceedings held by the Chancery Court of the First Judicial District of Harrison County, Mississippi, in that the voluntary parental rights were not complied with as provided by § 1913, *U.S.C.A.*, and it is further alleged and charged that under the provisions of § 1911, *U.S.C.A.*, the Indian Tribe recognized as the Mississippi Band of Choctaw Indians have exclusive jurisdiction over child custody proceedings involving an Indian child, and that said Indian children in

this cause are wards of the Tribal Court and that the Indian Tribe retains exclusive jurisdiction and further provides that in any State court proceedings for the foster care, placement of or termination of parental rights to an Indian child, the Indian Child's Tribe shall have the right to intervene at any point; and, § 1912 *U.S.C.A.*, further provides that the Indian child's Tribe shall be notified by Registered Mail with return receipt of any pending proceedings; that in the above styled and numbered cause no notice was given as provided by said statute to the Mississippi Band of Choctaw Indians of said pending matter.

III.

It is further alleged and charged that said minor children are full-blooded Choctaw Indians and as such members of the Mississippi Band of Choctaw Indians that the best interest of said minor children would be served by said adoption proceedings being vacated and held for naught, and said minor children either being restored to the Mississippi Band of Choctaw Indians, Choctaw Social Services, or returned to the natural mother, or by the placement of said children in the Choctaw environment.

WHEREFORE, PREMISES CONSIDERED, Movant prays that this its Motion be filed and that upon a hearing, this Honorable Court will enter its Decree vacating and setting aside the Final Decree of Adoption in this cause and restoring said minor children either to the natural mother or to the Mississippi Band of Choctaw Indians, Department of Social Services for further disposition of said minor children, and Movant prays for such other relief, both general and special, as it may be entitled to receive, as in duty bound it will ever pray.

Respectfully submitted,

MISSISSIPPI BAND OF CHOCTAW INDIANS

BY: /s/
PHILLIP MARTIN, TRIBAL CHIEF

COUNSEL FOR MOVANT:

ALFORD, THOMAS AND KILGORE

BY: /s/
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STATE OF MISSISSIPPI
COUNTY OF NESHOBA

THIS DAY personally appeared before me, the undersigned authority in and for the county and state aforesaid, PHILLIP MARTIN, personally known to me to be the Chief of the Mississippi Band of Choctaw Indians, an Agency of the United States Government, Department of the Interior, Bureau of Indian Affairs, who after being by me first duly sworn, deposed and stated on oath that the allegations, matters, facts and things alleged and set forth in the foregoing Motion to set Aside Final Decree of Adoption are true and correct as therein stated.

PHILLIP MARTIN

SWORN TO and subscribed before, this the 25th day of March, 1986.

/s/
Notary Public
My Commission Expires:
February 22, 1988

C. Lower Court Judgment

IN THE CHANCERY COURT OF
HARRISON COUNTY, MISSISSIPPI
FIRST JUDICIAL DISTRICT

In the Matter of the Adoption of
SAMUEL SETH HOLYFIELD and
MEGAN BETH HOLYFIELD NO. A-3574

JUDGMENT

THIS MATTER came on to be heard upon the Motion of the Mississippi Band of Choctaw Indians by and through their attorney, Honorable Herman Alford, and the Court having heard and considered arguments of counsel in this matter, as well as receiving and considering Memorandum Briefs, finds as follows:

I.

That the natural mother of these twin native American babies went to some efforts to see that said babies were born outside of the confines of the Choctaw Indian Reservation in Philadelphia, Mississippi. Shortly after the children's birth the parents arranged for their adoption by the Holyfields, and instituted the necessary papers and proceedings to accomplish this adoption through the Chancery Court of Harrison County, Mississippi. At no time from the birth of these children to the present date, have either of them resided on, or physically been on, the Choctaw Indian Reservation. That the Choctaw Indian Tribe has never obtained exclusive jurisdiction over the children involved herein, and the Motion to Vacate and Set Aside the Decree of Adoption should be overruled. It is, therefore,

ORDERED AND ADJUDGED, that Movants Motion to Vacate and Set Aside the Decree of Adoption herein should be overruled.

SO ORDERED AND ADJUDGED, this the 30th day of July, 1986.

/s/
Jason H. Floyd, Jr.
Chancellor

D. Lower Court Opinion

IN THE CHANCERY COURT OF
HARRISON COUNTY, MISSISSIPPI

FIRST JUDICIAL DISTRICT

ADOPTION OF
SAMUEL SETH HOLYFIELD and
MEGAN BETH HOLYFIELD NO. A-3574

OPINION

The Court having heard and considered the arguments of counsel in this matter as well as receiving and considering their briefs is of the following opinion.

It appears to the Court that the mother of these twin Native American babies went to some efforts to see that they were born outside the confines of the Choctaw Indian Reservation. Shortly after the children's birth, the parents arranged for their adoption by the Holyfields and instituted the necessary papers and proceedings to accomplish this adoption. At no time from the birth of these children to the present date have either of them resided on or physically been on the Choctaw Indian Reservation. The Court therefore finds that the Indian Tribe never obtained exclusive jurisdiction over the children involved herein and the Motion to Vacate and Set Aside the Decree of Adoption should be overruled.

Counsel for Mr. and Mrs. Holyfield is requested to prepare a judgment in accordance with this opinion, present the original to the Court and a copy to opposing counsel.

If the Court has heard no objection as to form within ten days from the receipt of the original, same will be entered as the judgment of this Court.

The original of this opinion has been filed with the Clerk pursuant to the Rules in Chancery.

July 14th 1986

/s/
Jason H. Floyd, Jr.
Chancellor

E. Opinion Below

IN THE SUPREME COURT OF MISSISSIPPI

NO. 57,659

IN THE MATTER OF B.B. AND G.B., MINORS.
MISSISSIPPI BAND OF CHOCTAW INDIANS
v.
ORREY CURTISS HOLYFIELD,
VIVIAN JOAN HOLYFIELD,
J.B., NATURAL MOTHER AND W.J., NATURAL FATHER

AUGUST 5, 1987

AS MODIFIED ON DENIAL OF REHEARING
September 16, 1987.

Herman Alford, Alford, Thomas & Kilgore and Edwin R. Smith, Philadelphia, for appellants.

Edward O. Miller, Gulfport, for appellees.

Before ROY NOBLE LEE, P.J., and SULLIVAN and GRIFFIN, J.J.

GRIFFIN, Justice, for the COURT:

I.

The Mississippi Band of Choctaw Indians appeals the judgment of the Harrison County Chancery Court over-

ruling its motion to vacate and set aside a decree of adoption awarding the minor children, "B.B." and "G.B.", to appellees, Orrey Curtiss Holyfield and Vivian Joan Holyfield. As error appellant assigns two propositions.

1. The trial court should not have exercised jurisdiction over adoption proceedings which, the Band contends, were subject to the exclusive jurisdiction of the Mississippi Band of Choctaw Indians Tribal Court by operation of Federal law; and

2. The trial court erred in not conforming its proceedings to the minimum federal standards under 25 U.S.C.S. §1901-1923 involving child custody proceedings for Indian children. Said standards govern Indian placements and adoptions by requiring tribal notice, due execution of parental consents, application of mandated placement priorities and adherence to tribal cultural customs.

The chancellor therein determined that the parties to the adoption had complied fully to the extent required by law, and held accordingly in awarding adoption to the Holyfields.

We affirm the lower court's opinion, and find not only that the chancellor exercised the proper jurisdiction over this action, but also that the lower court kept within the federal guidelines established under the Indian Child Welfare Act.

II.

Twin babies were born to J.B. on December 29, 1985, in Gulfport, Harrison County, Mississippi. The children were born out of wedlock to J.B. and W.J., the putative father, who are both full-blood Choctaw Indians. A petition for adoption was filed on January 16, 1986, by the Holyfields, who were joined in such by the natural mother. A consent to adoption form was executed by J.B. on January 10, 1986. A consent to adoption form and reaffirmation

thereof were filed by W.J. on January 11, 1986, and June 13, 1986, respectively.

The Chancellor issued the decree of adoption on January 28, 1986.

The Mississippi Band of Choctaw Indians ("The Band") filed a motion to vacate and set aside the final decree of adoption on March 31, 1986.

Affidavits again reaffirming their consent to adoption forms were filed by the natural parents on May 31, 1986, and June 9, 1986. The content of these forms stated specifically that (1) the natural parents reaffirmed their consent to adoption; (2) the adoptive parents to be the Holyfields; (3) the children were born in Gulfport, Mississippi, and have at no time been on the Choctaw Indian Reservation in Neshoba County, Mississippi; and (4) it is the natural parents' desire that the children remain in Gulfport and with the Holyfields.

On July 14, 1986, the lower court overruled the Band's motion and entered its decree on July 30, 1986.

III.

[1] The major concern of this Court in reviewing cases such as the one at bar is a determination of whether the chancellor acted in the best interest of the minor children in his denial of the Band's petition on the one hand, and his awarding adoption to appellees, the Holyfields, on the other. See *Eggleston v. Landrum*, 210 Miss. 645, 50 So.2d 364 (1951) ("The welfare of the child is the primary consideration in providing for his adoption"). However, where a jurisdictional problem exists, we cannot ignore it in favor of finding for the welfare of the child, and must act in accordance with the law rather than following what we deem to be purely an equitable solution.

There is no doubt that the area designated for Choctaw Indians residing in Neshoba County, Mississippi, lies within

the jurisdiction of the U.S. Government, at least as far as certain federal statutes operate to preclude the exercise of State criminal jurisdiction therein. See, e.g., *U.S. v. John*, 560 F.2d 1202 (5th Cir. 1977), Rev'd 437 U.S. 634, 98 S.Ct. 2541, 57 L.Ed.2d 489 (1978); on Remand, 587 F.2d 683 (5th Cir. 1979).

The definition of "Indian Country" is provided in Title 18, §1151 of the U.S. Code. Within this definition are three categories of land: the one with which we are concerned reads in pertinent part, "All land within the limits of any Indian reservation under the jurisdiction of the U.S. Government, notwithstanding the issuance of any patent." The area in Neshoba County was declared by Congress in 1939 to be held in trust by the federal government for the benefit of the Mississippi Choctaw Indians. *U.S. v. John, supra*, at 649, 98 S.Ct. at 2549. The declaration was followed in 1944 by Congressional approval of a constitution and by-laws as adopted by the Band, which also issued a proclamation establishing the reservation at that time. *Id.*

The Constitution and the by-laws under the Choctaw Indian Tribal Code set forth the jurisdiction of the tribe in Mississippi. The Supreme Court, in *U.S. v. John, supra* at footnote 21, did not consider the question of whether federal law dealing with the Indian pre-empts tribal jurisdiction. However, in the case sub judice the tribal code mirrors the language of the federal government to the extent that no conflict in laws in apparent.

The applicable sections in the federal code dealing with child custody proceedings are 25 U.S.C.S. §1911(a) and §1918, which read in part:

> **§1911. Indian tribe jurisdiction over Indian child custody proceedings.**
>
> **(a) Exclusive jurisdiction.** An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian

> child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.
>
> **§1918. Reassumption of jurisdiction over child custody proceedings**
>
> **(a) Petition; suitable plan; approval by Secretary.** Any Indian tribe which became subject to State jurisdiction pursuant to the provisions of the Act of August 15, 1953 (67 Stat. 588), as amended by title IV of the Act of April 11, 1968 (82 Stat. 73, 78), or pursuant to any other Federal law, may reassume jurisdiction over child custody proceedings. Before any Indian tribe may reassume jurisdiction over Indian child custody proceedings, such tribe shall present to the Secretary for approval a petition to reassume such jurisdiction which includes a suitable plan to exercise such jurisdiction.

The tribal code section addressing jurisdiction in adoption proceedings is §11-17-5 of the revised constitution and by-laws of the Mississippi Band of Choctaw Indians (1975), article III, which states:

> **§11-7-5 JURISDICTION OVER ADOPTION**
>
> **THE MISSISSIPPI BAND OF CHOCTAW INDIANS,** shall have full original jurisdiction in adoption matters where the persons to be adopted is an enrolled member of the **TRIBE** or eligible for enrollment, and also where the child lives within the **RESERVATION** or where the case has been transferred back to the **CHOCTAW TRIBAL COURT** from the State Court.

We surveyed the decisions of various courts faced with a dilemma similar to the one at bar, and found almost uniformly that, in accordance with 25 U.S.C.S. §1911(d) of the Indian Child Welfare Act, full faith and credit has been given by the states to the acts of any Indian tribe attributable to child custody proceedings. See *Native Village of Stevens v. Smith,* 770 F.2d 1486 (9th Cir. 1985) (the Federal court therein determined that a tribal counsel decision to remove a child from his home and place him under tribal custody, because it was in the best interest of the child, must be given full faith and credit by the State under 25 U.S.C.S. §1911(d).) But see, *Re: J.R.S.,* 690 P.2d 10 (Alaska 1984) ("Distinction is made between adoptive placement and termination of parental rights, and only in the latter does §1911 support intervention"); *State ex rel. Department of Human Services v. Jojola,* 99 N.M. 500, 660 P.2d 590 (1983) ("25 U.S.C.S. §1911(a) is inapplicable to paternity determination and child support enforcement when state is a party and the other party is an Indian.")

[2,3] The key language on which the case at bar turns is the requirements that the Indian child reside or be domiciled within the reservation of the tribe. Hence, even if this Court were to concede that the lower court erred in exercising jurisdiction over the adoption proceedings, which it does not, in any event the judge did conform and strictly adhere to the minimum federal standards governing adoption of Indian children with respect to parental consent, notice, service of process, etc.

At no point in time can it be said the twins resided on or were domiciled within the territory set aside for the reservation. Appellant's argument that living within the womb of their mother qualifies the children's residency on the reservation may be lauded for its creativity; however, apparently it is unsupported by any law within this state, and will not be addressed at this time due to the far-

reaching legal ramifications that would occur were we to follow such a complicated tangential course.

Appellant cites two cases which recognize "the doctrine" that the domicile of minor children follows that of the parents. See *Boyle v. Griffin,* 84 Miss. 41, 36 So. 141 (1904); and *Stubbs v. Stubbs,* 211 So.2d 821 (Miss. 1968). However, in *Stubbs* this Court actually held that domicile was determined by physical presence, declaration of intent, and the relevant facts and circumstances, and in *Boyle, supra* at 84 Miss. at 42, 36 So. 141, the thrust of that case was towards a determination of the inability of the children thereir to change their domicile from that of the parents during their minority, and, if the parents changed their domicile, that of the children follows it.

The facts and laws as applied in *Stubbs* and *Boyle* are clearly distinguishable from the case at bar: the Indian twins have never resided outside of Harrison County, Mississippi, and were voluntarily surrendered and legally abandoned by the natural parents to the adoptive parents, and it is undisputed that the parents went to some efforts to prevent the children from being placed on the reservation as the mother arranged for their birth and adoption in Gulfport Memorial Hospital, Harrison County, Mississippi. The problem of guardianship for minor children in *Boyle* is nowhere present in this action, nor is the question of change of domicile at issue.

The domicile of B.B. and G.B. has been and continues to be Harrison County, and the court therein exercised proper jurisdiction over the children's adoption proceedings. And, although these proceedings in the lower court actually escape applicable federal law on Indian Child Welfare for this reason, the chancellor insured that that the minimum federal standards would be met in any event when the court chose to exercise jurisdiction. Hence we note that submission of various forms filed by the natural

parents affirming and reaffirming their consent to adoption.

There being no merit to either error assigned by the Mississippi Band of Choctaw Indians, the order of the lower court is affirmed.

AFFIRMED.

WALKER, C.J., ROY NOBLE LEE and HAWKINS, P.JJ., AND DAN M. LEE, PRATHER, ROBERTSON, SULLIVAN and ANDERSON, J.J., concur.

E. Notice of Appeal

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

NO. ____

IN THE MATTER OF B.B. AND G.B., MINORS.

MISSISSIPPI BAND OF CHOCTAW INDIANS
Appellant,

v.

ORREY CURTISS HOLYFIELD,
VIVIAN JOAN HOLYFIELD,
J.B., NATURAL MOTHER AND W.J., NATURAL FATHER
Appellees.

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NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that the Mississippi Band of Choctaw Indians, the appellant above-named, hereby appeals to

the Supreme Court of the United States from the final judgment of the Supreme Court of the State of Mississippi, affirming the denial of Appellant's motion to vacate and set aside the decreee of adoption, entered in this action on September 16, 1987.

This appeal is taken pursuant to 28 U.S.C. §1257(2).

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